UNITED
NATIONS

TD

United Nations Conference
on Trade and Development

Distr.
GENERAL

TD/B/C.5/141
28 February 1992

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD
Special Committee on Preferences
Nineteenth session
Geneva, 18 May 1992
Item 4 of the provisional agenda

CONSULTATIONS ON HARMONIZATION AND IMPROVEMENT OF THE RULES OF ORIGIN

Examination of definitions of "Substantial Transformation" and implications of harmonization: Possible initiatives in regard to simplification and liberalization

Report by the UNCTAD secretariat

CONTENTS

Chapter		Paragraphs
	Summary and conclusions	1 - 5
I.	Mandates, objectives and scope	6 - 8
	A. Mandates	6 - 7
	B. Objectives and scope	8
II.	Examination and comparison of two criteria	9 - 55
	A. Introduction	9 - 11
	B. Formulation	12 - 26
	1. Percentage criterion	12 - 16
	2. Process criterion	17 - 22
	3. Comparison of formulation as between percentage and process criteria	23 - 26

GE.92-50471/4345B

CONTENTS

Chapter			Paragraphs
II.	C.	Substance	27 - 55
		1. Introduction	27 - 29
		2. Percentage criterion	30 - 36
		3. Process criterion	37 - 43
		4. Comparison of substance	44 - 55
III.		Improvements in rules of origin	56 - 78
	A.	Harmonization	56 - 70
		1. Definitions	56
		2. Background	57 - 61
		3. Benefits	62 - 66
		4. Further considerations	67 - 70
	B.	Other improvements	71 - 78
		1. Background	71 - 73
		2. Harmonization and simplification	74
		3. Concept of preference-giving content	75
		4. Liberalization of the percentage and process criterion	76
		5. Cumulation	77
		6. Least developed countries	78

ANNEXES

Annex	
I.	Summary of percentage criterion rules
II.	Process criterion basic rule of change of tariff heading - Practical examples
III.	Process criterion: Goods excepted from the basic rule - Examples of rules applied to such goods
IV.	Conversion of process criterion rules into percentage criterion equivalents
V.	Comparison of some "excepted" products (process criterion rule) with the percentage criterion (Canadian version)

SUMMARY AND CONCLUSIONS

1. This report was written in order to facilitate discussions and find solutions to the various questions relating to origin rules which face the Special Committee on Preferences and its Sessional Committee on Rules of Origin. These tasks relate to the mandate of resolution 159 of UNCTAD VI and to the Agreed Conclusions (12) and resolution 13 (XVII), paragraph 8, of the Special Committee on Preferences at its seventeenth and eighteenth sessions respectively. The report also refers to the responsibilities inherited from the Working Group on Rules of Origin which concern a range of possible initiatives described in secretariat document TD/B/C.5/120, the discussion of which has not been completed.

2. The tasks thus consist of examining and reaching conclusions as to possible improvements in rules of origin under the headings of harmonization, simplification and liberalization. An important factor which the report also takes into account is the Agreed Conclusion 12 (XVII) that the preference-giving countries should examine, and exchange views upon, both definitions of "Substantial Transformation". This provides an opportunity for all aspects of the origin rules to be considered and possibly updated so as to rectify shortcomings that have been identified over the past two decades. The lack of harmonization of the rules is one such shortcoming, which is regarded as a major (and also inadvertent) barrier to GSP trade. It now deserves fresh attention following the adoption of the Harmonized Commodity Description and Coding System (HS) by all preference-giving countries and the consequent possibility of harmonization on the basis of the process criterion. Such harmonization could also provide an opportunity for simplification and liberalization.

3. The examination of origin rules to be undertaken by preference-giving countries is also to take account of their operational experiences. In order to complement this approach, the present report examines in depth the two definitions of "Substantial Transformation", namely, the "process" criterion and the "percentage" criterion, on a theoretical basis and then compares their respective merits and demerits. This reveals some possible practical consequences of importance to both preference-giving and receiving countries in the event of harmonization either on a limited basis (i.e. harmonization of existing differences within and between the various versions of each of the two definitions) or on a full basis (i.e. replacement of one definition by the other). The tentative conclusion is that a percentage criterion based upon import content is preferable because of its simplicity and straightforwardness. However, all process criterion countries use the same basic rule; and the lists of excepted products and the rules specified for such products are largely, though not completely, harmonized. Thus the scope for further harmonization between the national versions of the process criterion is small.

4. The report then compares the formulation and substance of the percentage criterion with that of the process criterion. As regards substance, the methods used by the two criteria to limit the use of imported materials are so different that valid comparisons are difficult to establish. The percentage criterion limits quantities of imported materials but not their descriptions. The process criterion (in its basic rule) is the opposite; it restricts

descriptions of imported materials but not their quantities, and consequently might be expected to produce widely differing effects as compared with the criterion percentage. Apart from these limited direct comparisons, the overall impression is that the two criteria produce widely differing effects consequently enhancing the case for harmonization. The report describes some potential benefits which might ensue from harmonization, e.g. burden sharing of GSP imports might be better equalized as between preference-giving countries and wider market access provided for preference-receiving countries, with its potential for increased GSP exports. As regards possible benefits of simplification, liberalization and improvements which would be of advantage to preference-receiving countries, a comparison of the two criteria show that on the evidence of the present report it is not possible to choose a criterion upon which to harmonize with any assurance that it would in general be more liberal than its predecessor.

5. Finally, the report suggests that, in considering their attitudes towards harmonization, individual preference-receiving countries might attempt to assess the balance of advantages for them, e.g. in regard to the potential value of wider market access (a longer-term benefit) as against some changes in the conditions of GSP entitlement and consequent disruption of existing GSP trade. The impact of the latter would be alleviated if, at the time of implementation of harmonization, transitional measures were also introduced allowing the parallel use of both the harmonized criterion and the criteria that have been replaced. So far as preference-giving countries are concerned, attitudes to possible harmonization would depend upon assessments of the impact on domestic economies as a result of any increase in GSP imports.

Chapter I

MANDATES, OBJECTIVES AND SCOPE OF REPORT

A. Mandates

6. Paragraphs 1, 2 and 3 of the agreed conclusion 12 (XVII), adopted by the Special Committee on Preferences at its seventeenth session (Geneva, 14-22 May 1990) (document TD/B/1263), are as follows:

> Agreed that in order to respond to Conference resolution 159 (VI), section III, paragraph 18, a progressive and item-by-item examination of possible initiatives based upon secretariat document TD/B/C.5/120 relating to improvements in existing rules of origin should be pursued by the Special Committee in its future deliberations;
>
> Noted the adoption of the Harmonized Commodity Description and Coding System (HS) by all preference-giving countries;
>
> Agreed that
>
> (i) Consideration should be given in the course of the next review to examining the current definitions of "substantial transformation", namely the process criterion and the percentage criterion;
>
> (ii) Preference-giving countries, in the course of their review of their schemes, should examine both definitions in the light of their experience over two decades and exchange views thereon during a future session of the Special Committee on Preferences.

7. Paragraph 8 of resolution 13 (XVIII), adopted by the Special Committee on Preferences at its eighteenth session (Geneva, 10-18 May 1991):

> Underlines the significance of improving the rules of origin in the increased utilization of the GSP schemes; recommends that preference-giving countries continue considering simplification and improvement of their rules of origin; in this regard, recognizes the potential contribution which preference-giving country content in the rules of origin can make in stimulating economic cooperation and two-way trade, in particular, between developed and developing countries, and urges preference-giving countries to consider incorporating this element in the context of liberalizing their rules of origin; recognizes also that the grant of regional and subregional cumulation facilities under the GSP in an interdependent world economy may facilitate economic cooperation among developing countries.

B. Objectives and scope

8. The objectives of this report are threefold. Firstly, they are to facilitate the review of both definitions of "substantial transformation", which is to be undertaken during a future session of the Special Committee on Preferences, by means of a detailed examination and comparison of their

characteristics, including their merits and demerits (see chapter II). Secondly, as part of this detailed examination and as an important means of improving and simplifying the rules of origin, the report includes in chapter III, A., a detailed consideration of the possibilities and implications for both preference-giving and receiving countries of the introduction of a programme of limited or full harmonization of the current definitions of "substantial transformation". Thirdly, with reference to the Agreed Conclusions (12) (XVII) and to resolution 8 (XVIII) of the Special Committee on Preferences, and its recommendation that preference-giving countries should continue considering simplifications and improvements of their rules of origin, the report provides notes, in chapter III, B., on possible initiatives (other than harmonization) including their merits and demerits (see chapter II).

Chapter II

EXAMINATION AND COMPARISON OF THE TWO CRITERIA

A. Introduction

9. Entry into a preference-giving country at a GSP preferential rate of duty requires the goods in question to have originated in a preference-receiving country in accordance with the rules of origin prescribed by the preference-giving country of importation. All preference-giving countries require goods to be either entirely and wholly the produce of a preference-receiving country or, where this is not so, for example goods produced from material imported 1/ from outside that country, those materials must have undergone "substantial transformation" 2/ during the manufacturing process in the preference-receiving country where the finished goods are manufactured.

10. The term "substantial transformation" is defined by each preference-giving country either on the basis of a "percentage criterion" or a "process criterion". Both definitions place limitations directly or indirectly upon the use of imported materials. Australia, Canada, New Zealand and the United States use the percentage criterion exclusively. 3/ The "process criterion" countries are the EFTA countries (Austria, Finland, Norway, Sweden, Switzerland), the EEC and Japan. This criterion is expressed by means of a basic rule and a list of products excepted from the basic rule, for which specific rules are prescribed. 4/ Many of these rules contain a percentage limitation on the use of imported materials.

11. As regards those preference-giving countries which use the percentage criterion exclusively, there are differences between them both in the terminology used in describing them (i.e. their formulation) and in their substance, i.e. the limitations imposed on the use of imported materials. The process criterion in regard to its basic rule is formulated in terminology which is common to all the countries concerned. In regard to the specific rules applied to products excepted from the basic rule there are some differences in substance between the countries concerned (except as between the EFTA countries). Most preference-giving countries do not accept what are termed "minimal processes" as conferring origin, whether or not the appropriate criterion may have been satisfied. The process criterion countries have a list of processes that are regarded as minimal. The percentage criterion countries (Australia, Canada, New Zealand and the United States) regard this list as indicative of processes that are unlikely to be acceptable as conferring origin on the finished product.

B. Formulation

1. Percentage criterion 5/

(a) General

12. Although there are various versions of the percentage criterion with differences in formulation and substance they all possess some common characteristics, e.g. all appear to be transparent, i.e. expressed in plain

and straightforward language. However, in certain versions there are ancillary rules, some of which are uncertain in meaning and require interpretation.

13. There are important differences in the formulation of the numerator and denominator used in calculation of percentages. The major differences in the numerator reflect two approaches, one which places a maximum limit on the use of imported material and the other which places a minimum limit on the domestic content contributed by the preference-receiving country. Interpretative definitions are applied by some preference-giving countries in regard to both approaches. Where "imported material" is used as numerator, the method of its valuation is defined. Where "domestic content" is used, the elements it may comprise are, to varying degrees, defined, so as to identify those that may be included in the calculation of the numerator and those that may not. As regards the denominators, definitions used are "ex-works cost", "ex-factory price", "ex-factory or ex-works cost", "ex-factory price or value as appraised by the United States authorities".

14. The nature of each formulation of the percentage criterion affects the administrative effort required to introduce and maintain compliance with criterion. It also affects the substance of the criterion (see C.). As regards administrative effort, manufacturers and exporters in preference-receiving countries need to establish records in sufficient detail to meet the differing requirements of each formulation. These vary particularly in the case of some "domestic content" formulations, where the division drawn between acceptable and non-acceptable elements of the numerator are set out in detail. These elements may be familiar only to accountants. As prices, costs and quantities change, recalculation will be necessary to ensure GSP entitlement. While some of these tasks may form part of the normal accounting procedures required for commercial purposes, some may not. In such cases therefore additional professional expertise may be required.

(b) Comparison of various versions

15. In regard to formulation of the numerator, the simplest and most readily identifiable and comprehensible appears to be "import content". This calls for determination of the amount of imported material used and of its value, in most cases defined as the value at the time of importation. Both elements should be available as part of ordinary commercial practice. "Domestic content" requires a breakdown of the various elements which appear to comprise the domestic contribution and then a separation of these elements between those that are accepted by the preference-giving country and those that are not. Values have to be ascribed to acceptable elements. It appears unlikely that such tasks form part of normal commercial practice.

16. As regards the formulation of denominators (para. 13) these, apart from one instance, call for figures which appear to be readily accessible and determinable. The exception is the formulation used by the United States, i.e. "ex-factory price or value as appraised by United States authorities". Where appraisal occurs, the value fixed by the United States import authority, although it may affect GSP entitlement, may not be available until after the import of the goods, with possible disadvantage to the traders concerned.

2. Process criterion

(a) General

17. All applications of the process criterion make extensive use of the HS to define "substantial transformation". The HS system was designed expressly for use in the classification of goods in international trade. It is divided into 97 chapters, each of which is subdivided into 4-digit headings, of which there are 1,241.

18. The use of the HS system for purposes of origin definition relies upon two of its features. Firstly, each and every article of industry and commerce is classified in only one 4-digit heading. Secondly, the physical characteristics of articles differ, often progressively, from one heading to another. In many chapters, headings are arranged consecutively in numerical order to reflect manufacture from raw material to processed raw material to semi-manufactures to finished products. For example, glass in the mass (heading 70.01) is a material from which glass rods or tubes may be made (heading 70.02). Heading 70.03 covers glass in yet a further state of manufacture. Thus where classifications of products change, e.g. from 70.01 to 70.02 to 70.03, this implies progressive stages in manufacture. Where such a stage, e.g. from 70.01 to 70.02, is accepted as achieving "substantial transformation", the rule, instead of describing the manufacturing processes that must be carrried out, requires imported material to undergo a change in HS classification as a consequence of processing in a preference-receiving country. This is the basic rule of the process criterion and is referred to as "Change of Tariff Heading" (or CTH). It is satisfied when processing results in a finished product being classified in a 4-digit HS heading which differs from any of the headings applicable to imported materials used in its manufacture.

19. The HS system was not, however, expressly designed for origin rule purposes and the basic rule does not in all cases result in "substantial transformation" to the satisfaction of preference-giving countries. Consequently, a list of such products has been established on the basis of the HS nomenclature. The listed products are then excepted from the basic CTH rule, and made subject to separate and specific rules. These are of various formulations, as can be seen from annex III. Many are expressed in terms of the HS, whilst others are expressed in plain language. Many employ a percentage criterion, occasionally in double or triple form. This is formulated with import content as the numerator and ex-factory price (f.o.b price in the case of Japan) as the denominator. Another type of rule specifies the materials from which the finished product is required to be made.

20. The process criterion thus depends entirely upon the HS system, knowledge and correct application of which is necessary in order to understand and apply the origin rules. Where only the basic rule applies (i.e. CTH), the manufacturer must ensure that none of the imported materials used falls within the same 4-digit tariff heading as the finished product, a requirement for which advice from specialists in HS classification might be required. Certifying authorities in preference-receiving countries would need expertise

in HS classification over a wide range of goods. Cases may arise where correct HS classification remains in doubt even after reference to the relevant publications. 6/ These may be considered in conjunction with the Customs Cooperation Council.

21. In order to establish and maintain compliance with the basic rule of the process criterion, records would be required of the description, HS classification and sources of materials used in manufacture. Once compliance with the criterion is determined, reassessment might be required in a limited range of circumstances, e.g. if a change were made in the descriptions of imported materials used, or if the HS classification were changed. However, in the case of goods that are listed as excepted from the basic CTH rule and for which the particular rules specified include a percentage limit, records would be required of costs and quantities of imported materials used in manufacture and prices of finished products. Compliance with such rules would need to be re-calculated as costs and prices fluctuate.

(b) Comparison of various versions

22. All countries using the process criterion employ the same formulation of the basic rule (CTH). They all use a list of products excepted from the basic rule and for which specific rules are applied heading by heading. There is considerable (but not complete) correspondence between the list of products and the formulations of the specific rules used by each preference-giving country.

3. Comparisons of formulations as between percentage and process criteria

23. From the preceding paragraphs the most important difference between the two formulations consists of the extensive use of the HS system in the case of the process criterion and the comparative transparency, i.e. the use of plain language, in the case of the percentage criterion. Comprehension of, and compliance with, the process criterion needs an accurate understanding and interpretation of the HS system. As regards the percentage criterion, the version that uses "import content" as numerator appears readily comprehensible and requires little specialist knowledge. In this regard it appears simpler than the process criterion. Where the percentage criterion uses "domestic content" as numerator, some versions might require expert advice to ensure compliance with the fine distinctions drawn between allowable and unallowable costs. How these versions compare with the formulation of the process criterion is difficult to assess.

24. The extent to which differences between the two formulations have a practical impact can only be surmized. It is reasonable to suggest that so far as newcomers to the GSP requirements are concerned, the formulation and presentation of the process criterion rules might initially be expected to produce a deterrent effect. This could be serious in the event that the newcomers had no experience of the HS or were familiar only with percentage criterion rules. If a reliable source of information and advice were however available in regard to the HS system, difficulties could readily be overcome and familiarity with the criterion established. The ability to provide such information and guidance in preference-receiving countries is thus important; it will of course vary from country to country.

25. So far as administrative effort is concerned, i.e. in relation to the establishment of compliance with the criteria and subsequent monitoring to ensure continuing compliance, there appears to be little in general to choose between the two. Possibly the percentage criterion might in practice be more burdensome since there would be an ongoing requirement to update calculations, especially during periods of inflation. This would apply especially where, as in some cases, a certificate of origin has to show the exact percentage content of the goods included in a consignment. By contrast, the process criterion seems to require less monitoring, except in those cases where goods are excepted from the basic CTH rule and percentage rules apply. Costs of administration are of course important, given the declining margins of GSP preference.

26. Assessment of comparative merits on a theoretical basis provides only an indication; the reality may well be different. Analysis of practical experience in application of the two criteria in both preference-giving and preference-receiving countries might help to provide a judgement of greater validity.

C. Substance

1. Introduction

27. By the term "substance" is meant the operational elements of the origin rules, in particular the limitations, and their stringency, which the criterion places upon the use of imported materials, components or parts in the manufacture of a product. These limitations are intended to serve the purposes of the origin rules as follows:

(i) to reduce or prevent "deflection of trade", i.e. the undermining of the customs tariff of a preference-giving country. This would occur if duty-free admission were accorded to third country goods that have merely transited through, or undergone only nominal processing in, a preference-receiving country;

(ii) to confine the benefits of preferential admission to bona fide manufactures of a preference-receiving country so as to improve its export trade and promote industrialization and employment.

While the criteria are required to satisfy the purposes of (i) and (ii) they are not intended, in themselves, to create unnecessary obstacles to the use of GSP. In that connection preference-giving countries apply a variety of safeguard measures aimed at controlling GSP trade, e.g. import restrictions such as ceilings and quotas as well as graduation.

28. The purpose of (i) is of particular importance to preference-giving countries in their wish to maintain the protective purposes of their tariff. They are naturally inclined to prefer stringency rather than liberality in the rules, i.e. in regard to the level of imported material permitted to be used. On the other hand, preference-receiving countries favour less stringency, in the belief that this would better serve the purpose of the origin rules

described in (ii) above, in particular so as to increase export trade. It follows from these separate and somewhat opposing interests that in forming a definition of "substantial transformation" a balance should be struck.

29. Examination of the substance of the two criteria is attempted in later paragraphs so as to describe the manner and extent to which each of them appears to fulfil the purposes of the origin rules and achieve an acceptable balance. This examination does not, however, take into account several other factors that affect the impact of the two criteria. These factors, whose use varies between preference-giving countries, include the concept of "preference-giving country content", various forms of "cumulation", and, in the case of the EEC, the availability of a system of "derogation". These tend to moderate the impact of the substance of the criteria in the direction of less stringency. An attempt to assess the complex implications of these various factors might be attempted at a later stage if it were wished to extend the scope of the present report.

2. Percentage criterion

30. The substance is provided by the conditions that (i) require the final process of manufacture to be carried out in the preference-receiving country of export and (ii) prescribe either a maximum percentage limit for the permitted content of imported materials used in manufacture or a minimum percentage content of domestic components (materials, labour, overheads, etc., as specified by the preference-giving countries). The condition in (ii) in its various forms of expression imposes quantitative, but not qualitative, limitations on the use of imported material, parts or components. Further, the criterion, including its percentages and ancillary rules, applies to all finished products without exception.

31. Canada is the only one of the four preference-giving countries to base its criterion on import content (40 per cent) as the numerator. The denominator is "ex-factory price". The other preference-giving countries use domestic content as numerator (Australia and New Zealand 50 per cent, United States 35 per cent) and as denominator "ex-works cost" (Australia and New Zealand) or "ex-factory price or value as appraised by United States customs authorities" (United States of America).

32. Thus various levels of restrictiveness are apparent in each of these four versions of the percentage criterion. The Canadian version applies its limit directly to the imported material that is the component of the finished product which the preference-giving country wishes to limit. The other three versions achieve their restrictions on the use of imported material by prescribing a minimum level for "domestic content". In these versions the non-domestic content, it might be thought, could consist of up to 50 per cent (Australia and New Zealand) or 65 per cent (United States). While this may be largely true in the case of Australia and New Zealand it appears to be an incorrect conclusion in the case of the United States version, since certain costs arising in the preference-receiving country, e.g. "indirect" processing costs and costs of imported materials that have been insufficiently transformed by processing, are not accepted as "domestic content". Such elements thus form part of the 65 per cent. The true limit imposed on

imported materials under the United States rules is uncertain, especially having regard to the extensive rules used to define and separate various cost elements. The true limit would seem to vary on a case-by-case basis.

33. The levels of restrictiveness are also affected by the various definitions of the denominator (para. 31). "Price" exceeds "cost" by the inclusion of factory profit, certain packaging costs, etc. Thus the limit on imported materials imposed by Canada is higher than would be the case if "costs" were used. The use by Australia and New Zealand of "cost" as opposed to "price" reduces the minimum requirement of domestic content and thus increases, potentially, the proportion of import content that may be used.

34. While it is not clear whether it is feasible, in regard to the various versions of the percentage criterion, to quantify degrees of restrictiveness in either absolute terms or on a comparative basis, it is apparent that the preference-giving countries concerned had differing opinions as to what levels of import (or domestic) content should be regarded as acceptable, i.e. to serve to their satisfaction the purpose outlined in paragraph 27 (i).

35. While there seems no theoretically correct answer to the question 'What percentage level should be set to secure the correct balance as between the interests of preference-giving countries and preference-receiving countries', the half-way figure of 50 per cent has some appeal. As evidenced by the various levels of percentages employed, the preference-giving countries however, despite the similarities between their economies and state of industrialization, do not take this view. Since none of the countries concerned provides for differing levels of restrictiveness vis-à-vis particular products or sectors of trade, some of the percentages (and numerators and denominators) may have been selected on other grounds, e.g. possibly for historical reasons that may be connected with former preferential arrangements.

36. As regards the interests of the preference-receiving countries, the question is whether and to what extent the percentage limitations imposed on the use of imported materials unduly or unreasonably restrict the scope for the production and export of GSP manufactures. It has been generally accepted that some preference-receiving countries, especially those in the early stages of development, have greater needs for liberality in origin rules than the more advanced preference-receiving countries. It is relevant to note here that since labour costs in preference-receiving countries are lower than those prevailing elsewhere, the percentage criterion results in a higher level of restrictiveness than may be realized by preference-giving countries which are accustomed to their substantially higher domestic labour costs.

3. Process criterion

37. The substance is contained in the basic rule (CTH) and in the various rules for the particular products that are specified in the list of exceptions to the basic rule.

(a) Basic rule

38. As regards the degree of restrictiveness imposed by the basic rule on imported materials used in manufacture, a wide range of possibilities exists. At one end of the spectrum the rule has the appearance of being extremely liberal since it permits a product to be manufactured entirely from imported materials provided that they are not classified in the HS heading of the product. At the other end of the spectrum the use of any "same heading" materials is totally excluded, no matter how minimal the quantity may be. Some practical examples showing how these possibilities may arise are given in annex II.

39. The impact of the basic rule varies from case to case, depending upon the nature and extent of the need to use imported materials, how they are classified in the HS system, what manufacturing process is required to produce the finished product and what HS heading applies to it. The varying impact produced by the rule makes it difficult to provide a general assessment of its overall effects. If a sufficiently wide range of examples, with adequate manufacturing data, were available, an attempt at a general assessment might be feasible. Even then the task of identifying an adequate range and sources of possible materials that are both suitable and available for use in manufacturing a given product would be formidable.

(b) Excepted goods

40. The number and range of products included in the lists of exceptions is extensive. Of the 97 chapters of the complete HS system about 84 are represented in the products listed. All HS chapters on textiles and clothing products, which are of particular interest to preference-receiving countries, are represented in the lists.

41. Various types of rules are applied to listed products. Examples are as follows:

- Manufactures from specified materials, in some cases:
  - requiring several stages of manufacture;
  - not requiring CTH;
- Manufacture with one percentage limitation;
- Manufacture from specified materials together with a percentage limitation;
- Manufacture resulting in a change of tariff heading together with a percentage limitation;
- Manufacture with two or three percentage limitations, in some cases with the added requirement that certain specified materials or parts must be of originating status.

42. As can be seen from these examples, the nature and extent of the restrictiveness built into each type are variable. They may have been devised so as to respond to the specific requirements of the preference-giving countries in regard to particular manufacturing or trade sectors, e.g. so as to achieve an acceptable degree of transformation. The most restrictive examples, as shown in the lists, appear to be the rules in which three or four conditions have to be satisfied. The most liberal seem to be those in which a finished product may be manufactured from materials falling in the same HS heading.

43. Many of these rules have aroused protests from preference-receiving countries in regard to their excessive complexity and restrictiveness. Specific practical examples have been quoted, e.g. at meetings of the Working Group on Rules of Origin and in response to questionnaires issued by the secretariat. It is significant that similar rules were originally applied in free trade agreements between the EEC and member countries of EFTA, i.e. between developed countries, but because, it was claimed, they had "in practice given rise to difficulties", an alternative single percentage criterion was provided for some descriptions of products. 8/

4. Comparison of substance

(a) As between the various versions of each criterion

Percentage criterion

44. There are four versions of the percentage criterion used by Australia, Canada, New Zealand and United States of America (see paras. 13 and 31). There is a close resemblance between the substance of the Australian and New Zealand versions, based on domestic content as numerator, ex-factory costs as denominator and a percentage level of a minimum of 50 per cent. There is less correspondence with the United States of America version; differences exist in regard to the percentage level, the definition of the numerator and possibility of using "appraised value" as denominator. The Canadian version differs from the other three.

45. As shown in paragraph 32, there are differences of substance among the four versions. In practical terms they may not be significant overall, but in order to make a more meaningful assessment an adequate range of practical examples might be examined. Practical application of the United States of America version presents problems because of some uncertainty as to the significance of the denominator and the complexity of the numerator, which requires the acceptable elements of direct processing costs to be separated from the unacceptable indirect costs. The differences are important in the sense that a manufacturer in a preference-receiving country who makes a product to a specification that meets, for example, the United States criterion may find that the product does not meet the criteria of the other countries.

Process criterion

46. As indicated in paragraph 22 there are some differences between the lists of excepted products in terms of descriptions of products and the rules to be applied. The former differences are in some cases due to differing product coverage of the various GSP schemes. In other cases the differences may be simply of a linguistic nature, the significance of which may require further consideration in the context of harmonization proposals.

(b) As between the percentage criterion and the process criterion

47. For the purposes of comparison with the percentage criterion, any one of the process criterion versions may be chosen (in respect of both the basic rule and the rules applied to excepted products), since the substance of all versions exhibits close comparability. But the substance of the four versions of the percentage criterion is on the other hand clearly diverse. For the purposes of comparison it is necessary to select one version; the Canadian version has been chosen because of its close similarity to the percentage rules applied to some products that are excepted from the process criterion basic rule.

48. So far as the basic process criterion rule is concerned, as already noted there are differences as between the methods by which restrictions are applied by that rule and by the percentage criterion. The latter imposes quantitative limitations while the former imposes qualitative limitations (i.e. descriptions of materials). The percentage criterion applied by Canada allows the use of up to 40 per cent of imported materials of any description in the manufacture of any product. As indicated in paragraph 38 the process criterion in its basic rule is capable, subject to HS classification of the finished product and the imported materials used, of permitting the use of up to 100 per cent of imported materials, or of disqualifying a product where only an infinitesimal quantity of imported materials has been used. This perhaps extreme example illustrates the practical consequences of diverse origin criteria. A product can be manufactured to meet the Canadian criterion; the same product could fail to meet the process criterion.

49. The two methods are so different in approach that an examination of the texts is in itself incapable of producing an overall meaningful comparison. The effects depend upon the facts of each case. Where imported materials are required to be used by a particular manufacturer and none is classified with the finished product under the same HS heading then the basic rule in that particular case is more liberal than the percentage criterion, i.e. the manufacturer can use as much of these materials as he wishes. At the other end of the scale, where a manufacturer wants to use an infinitesimal amount of imported materials classified in the same heading as the finished product, its use is prohibited and the product disqualified for GSP. This is a result which the percentage criterion is unlikely to produce. The basic rule in this case is substantially more restrictive than the percentage criterion.

50. As regards the rules for excepted products, however, some valid comparisons can be made between certain examples, e.g. those that contain a percentage requirement, and the Canadian version of the percentage criterion. The percentage rules for excepted products are expressed in terms of import

content with a range of percentage levels and can be compared directly with the Canadian version of the percentage criterion, which is expressed on the same basis with a maximum of 40 per cent for all products.

51. Comparisons on these lines have been made and are shown in illustrative lists in annex V. In summary form, in about 50 4-digit HS headings (see list (i)) the process criterion percentage rule corresponds with the Canadian version of the percentage criterion. For 10 4-digit headings (list (iv)) the process criterion percentage rules are more liberal than the Canadian, for 5 4-digit headings (list (iii)) they are more restrictive because of an additional requirement of CTH, and for 14 (list (ii)) there may be parity of restrictiveness in practical terms between the process criterion rule (50 per cent import content and CTH) and the Canadian rule. There are three other headings for which multiple percentage requirements are specified. These, on the basis of the texts, appear to be substantially more restrictive than the Canadian percentage criterion.

52. Another method of making direct comparisons can be applied in respect of process criterion rules (concerning those excepted products) that are expressed in plain language. These specify the materials from which manufacturing must commence, e.g. "Manufacture from (various) fibres" or "Manufacture from materials of heading ...". In such cases, in order to illustrate comparative restrictiveness vis-à-vis the percentage criterion, it is in some cases possible to convert the rules expressed in this way into their equivalent in percentage terms. To use this method, a breakdown of manufacturing costs for a given finished product is required in order to establish costs of e.g. imported inputs and costs (or added value) attributable to the various processes of production. These data are then used to determine the percentage content of imported materials calculated on the basis of processing costs as numerator and ex-factory price as denominator. The manufacturing data should preferably be obtained from sources in preference-receiving countries in order to arrive at results relevant to manufacturing activities in those countries.

53. Owing to its commercial confidentiality, there is little available information of this nature. However, some data have been published showing costs of manufacture of a few finished products in a preference-giving country. 9/ The data concern finished products, i.e. (a) cotton yarns, (b) cotton woven fabric and (c) garments made from such fabrics. For these products the process criterion rules specify for (a) and (b) that each should be manufactured from fibre. For (c), the rules require manufacture from yarn. Data have been obtained that show the value added at each main stage of manufacture. On this basis, calculations show that the percentage limits for the use of imported material in manufacturing these particular products are for cotton yarn 57 per cent, for cotton fabric 23.8 per cent, and for garments 13.6 per cent. 10/ These results, subject to the qualification that they relate to manufacture in a preference-giving country (and also need to be updated), suggest that for two of the three products the process criterion rules are significantly more restrictive than a 40 per cent percentage criterion rule based upon import content.

54. The results described above are of course based upon a comparison of the process criterion rules (largely harmonized) with only one of the current percentage criteria. Differing results would no doubt emerge if comparison were based upon other versions of the percentage criterion. It is difficult, however, to evaluate those versions where limitations on imported materials are exercised by reference to domestic content with differing and complex interpretations.

55. Only limited inferences can be drawn from the examination and results described in previous paragraphs in regard to the theoretical 11/ comparative restrictiveness as between the process criterion and (one version of) the percentage criterion. The inferences include:

(a) The basic rule of CTH has a widely variable impact that prevents an overall comparison between its restrictive qualities and those of the one version of the percentage criterion (a comparison with some other versions of the percentage criterion, which, per se, are also variable in impact, is likely to support the same inference);

(b) Where direct comparisons can be made between some products excepted from the basic rule of CTH and (one version of) the percentage criterion, the results vary: for some products the rules for excepted products are subject to the same restrictions, while in other cases the restrictions are greater or less;

(c) While further examination and research may make it possible to draw other and more precise comparisons the inferences above support the view, important in connection with possible harmonization measures (chap. III. A.), that each of the two criteria produces individually variable impacts that prevent an assessment of the overall correspondence of the one criterion with the other;

(d) Illustrations of the significant disparities between the substance of the criteria underline the importance of harmonization in practical terms, i.e. the more significant the current disparities the more evident it is that harmonization would reduce existing barriers to market access.

Chapter III

IMPROVEMENTS IN RULES OF ORIGIN

A. Harmonization 12/

1. Definitions

56. In this chapter "limited harmonization" means the replacement of the various versions of the percentage criterion by a single harmonized version of that criterion, and the elimination of any differences that continue to exist in regard to the process criterion. "Full harmonization" means the replacement of one criterion by the other. 13/

2. Background

57. In international discussions in 1970 during the formative period of GSP the preference-giving countries said that the concept of "substantial transformation" had been variously interpreted in existing origin systems and that it was desirable to minimize variations in interpretation of origin for GSP purposes. The preference-receiving countries went even further, stating that "uniform rules" should be the final goal. Following further discussion, preference-giving countries settled upon the use of "two broad" categories, "i.e. a percentage (or 'added value') criterion and a process criterion; the variations within each of the categories would be eliminated to the greatest extent possible." 14/

58. The preference-receiving countries, at the third session of the Working Group on Rules of Origin in 1970, recorded their agreement "to the introduction to begin with of two systems of rules of origin one based on the process criterion and the other based on the value added criterion, in the expectation that the preference-giving countries which propose to adopt the value added criterion would (i) fix a single percentage of value added; (ii) adopt a well defined basis for calculation of the percentage; and (iii) have uniformity in the application thereof". 14/ The preference-receiving countries also expressed the view that "any goods qualifying for preference under one criterion would also enjoy preferential entry under the other criterion".

59. The definitions of "substantial transformation" that were subsequently introduced consisted of the "two broad categories" with variations within each of them showing differences in both formulation and substance. During the following two decades, preference-receiving countries continued to press for harmonization, concentrating mainly on the need for harmonization within each "category". During this period progress was made in the harmonization of the variations in the process criterions, leading to greater uniformity in its linguistic formulation and to removal of most differences in the rules applied to goods included in the lists of exceptions - at that time referred to as "Lists A and B". Nevertheless differences remain; complete uniformity has yet to be realized. So far as the percentage criterion is concerned, the national variations applied by each of the preference-giving countries remain unchanged from those introduced at the inception of GSP.

60. Since discussions on harmonization have concentrated on removing differences that exist within each of the two criteria, the more radical possibility - that one criterion should replace the other - has not received attention, whether as a matter of principle or practice, even though the possibility had been strongly supported in the early days of GSP. Until 1988 it was technically impossible for the process criterion to become the sole definition of "substantial transformation" since the Brussels Tariff Nomenclature, on which the criterion had been based, had not been adopted by all of the percentage criterion countries for their national customs purposes. It had always, of course, been technically possible for the percentage criterion to become the sole criterion. Now, however, that all preference-giving countries have adopted the HS system for their national customs purposes and that the process criterion is formulated on an HS basis, the technical possibility exists for the process criterion to replace the percentage criterion.

61. This development inspired renewed attention to the concept of a single uniform criterion at the seventeenth session of the Special Committee on Preferences when the spokesman for the Group of 77 referred to the "new possibility of basing uniform rules on the process criterion or, if that were not possible, on the percentage criterion". 15/

3. Benefits

62. The main benefits of harmonization 16/ in principle may include:

(i) improved equalization of "burden-sharing" of GSP imports among preference-giving countries;

(ii) widening of market access for preference-receiving countries;

(iii) if it were possible for harmonization to be based upon the most simple and liberal versions of the criteria currently in force

- the present barrier to GSP trade attributable to the complexity of current rules would be eased

- liberalization would allow wider use of imported materials and facilitate acquisition of GSP entitlement, leading to more exports.

Against these benefits, however, harmonization would have the effect of requiring some goods to be manufactured to satisfy new rules, the substance of which would differ to some extent from the former rules. Initially, therefore, harmonization would affect the flow of current GSP trade, unless appropriate avoidance measures were taken.

63. So far as paragraph 62 (i) is concerned, the acceptance by preference-giving countries of the present diversity of the current criteria, without response in practical terms to the continuing pressure from preference-receiving countries for further harmonization, suggests that

"burden-sharing" is, under existing rules, satisfactory. If this is so, it seems doubtful whether benefits can accrue under this heading for preference-giving countries.

64. In regard to paragraph 62 (ii) and (iii), however, benefits in favour of preference-receiving countries appear to be available. The diversity of origin rules in itself has always been regarded as an important impediment, limiting market access and thus fragmenting and impeding production for export. These adverse consequences are increased by the complexity of excessive restrictiveness of some rules, generally ascribed to the process criterion. Their removal by means of harmonization measures, whether limited or full, is seen as an important and long overdue improvement.

65. The scale of these benefits for preference-receiving countries is related to the extent (and basis) of harmonization. The limited approach would promote equal access (in terms of origin rules) to the markets of Australia, Canada, New Zealand and the United States. As regards the process criterion, limited harmonization would remove the few remaining disparities in its present versions and could thus achieve only small improvements in market access to these countries. The limited approach, if it could be based upon the most simple and liberal of the present version of each of the two criteria, would, particularly in the case of the percentage criterion, help to produce the benefits described in paragraph 62 (iii).

66. Full harmonization on the other hand could in principle maximize these benefits. Access to all the markets of preference-giving countries in terms of GSP would be governed by one criterion, which, apart from any effect it may have on the present balance of burden-sharing, would make it possible for manufacturers in preference-receiving countries to produce goods by reference to the one criterion. These would be eligible for GSP treatment in the markets of all preference-giving countries. As regards the benefits referred to in paragraph 62 (iii), these can be obtained only if harmonization were based upon the simplest and most liberal of the existing criteria. As suggested in paragraphs 47-59, however, it does not appear possible so far to identify any criterion that is, "the most simple and liberal". The reality is that, overall, any one of the criteria when compared with another is more liberal in respect of some goods and less liberal in respect of others. Liberality may be more prevalent in one criterion than another, but even this appears difficult to establish. Unless it proves possible, e.g. by reference to data obtained by preference-giving countries in regard to their experience in applying the existing rules to reduce these uncertainties, the benefits achieved by harmonization as described in paragraph 62 (iii) are likely to be patchy, being offset to some unknown extent by the disadvantages of increased restrictiveness.

4. Further considerations

67. Having regard to paragraphs 62 and 63, preference-receiving countries may wish to consider whether and to what extent harmonization, limited or full, might confer a balance of advantage. This would need to be based upon their - no doubt - tentative choice of criterion for harmonization purposes. An assessment might be made on an individual country basis of the likely scale of

benefits, in terms of a potential increase in GSP exports attributable to the wider market access that would be acquired as a consequence of harmonization. It should be borne in mind that this benefit is likely to appear only in the longer term.

68. On the basis of the difficulties found in this report in regard to identification of the most simple and liberal of existing criteria, it seems likely that harmonization on the basis of any of the present criteria would produce unpredictable changes in the restrictions placed by existing origin rules on the use of imported materials. As suggested in paragraph 66 some changes may be of a liberalizing effect and others more restrictive. Manufacturers would have to adjust their manufacturing practices accordingly. This, of course, would take some time during which some disruption of existing GSP trade would occur.

69. To avoid or reduce this disruption, a solution essential to ensure the acceptable functioning of harmonization would be provided by the introduction of transitional arrangements, under which the former criterion would continue to be valid, in parallel with the new harmonized criterion. The period would need to be sufficiently prolonged to enable familiarity and adjustment to the new criterion to be well established.

70. Preference-giving countries, in forming their views as to the acceptability of harmonization would each need to consider what impact it might have on their domestic economy, e.g. in terms of the volume of GSP imports it might generate, on an overall basis or in regard to individual sectors of industry. There might also be a possibility of changes in the existing pattern of "burden-sharing" as between preference-giving countries. Moreover, harmonization would necessitate legislative action, probably for all countries, which could involve public debate. After each preference-giving country had taken a view on the acceptability of harmonization there would be a need for collective discussions between groups of countries, i.e. in the case of limited harmonization between two groups (one process criterion group and one percentage criterion group) and, in the case of full harmonization, between all preference-giving countries. Implementation of harmonization measures, including any transitional arrangements, would require a substantial administrative effort by each country.

B. Other improvements

1. Background

71. The Working Group on Rules of Origin has examined and discussed, over the past two decades, a range of possible measures aimed at improving the rules of origin. It has been generally agreed, on the basis of continuing concrete supporting evidence, that the rules need improvement in terms of harmonization, simplification and, in the view of the preference-receiving countries, liberalization. It has not, however, been found possible to reach agreement on the adoption and implementation of particular measures.

72. A list of possible initiatives together with a review of the considerations affecting them was provided in the secretariat report TD/B/C.5/120, a document which the Sessional Committee at its meeting in

May 1990 agreed should be used as the basis for a "progressive and item-by-item examination" to be pursued by the Committee in its further deliberations. The following paragraphs provide some additional comments.

2. Harmonization and simplification

73. Chapter III deals extensively with the considerations affecting harmonization, both limited or full, and has pointed out the possibilities for some simplification to occur if harmonization could be based upon the simplest of the existing versions of the criterion. Measures of simplification independent of harmonization might be considered irrespective of the outcome of discussion on harmonization. Many requests have been made to simplify some versions of the percentage criterion and of the particularly complex process criterion rules for certain excepted products.

3. Concept of preference-giving country content

74. The inclusion of a recommendation in paragraph 8 of resolution 13 (XVIII) of the Special Committee on Preferences that this concept should be widely adopted underlines the consistent view of many preference-receiving countries that it confers significant benefits, e.g. stimulation of economic activity and two-way trade. It is also regarded as being of particular potential benefit to the least developed preference-receiving countries as a method of encouraging infant industries, albeit of the "screw-driver" assembly type.

4. Liberalization

75. Some liberalization might result from adoption of harmonization measures, as discussed in Chapter III.A. However, the conclusions relating to liberalization have been set out in document TD/B/C.5/120 (para. 56), and are briefly:

(i) general, based upon acceptance of the view that the existing criteria introduced over two decades ago at a time of high tariffs, could be relaxed without impairing their effectiveness in preventing deflection of trade or adversely affecting the industrialization of preference-receiving countries achieved by GSP.

(ii) particular, i.e. applied to particular goods for which it is accepted that the origin rules are overstrict, i.e. they achieve not merely "substantial transformation" but rather "total transformation". Complex multiple condition rules applied to some products excepted from the basic rule of the process criterion have been identified as particular examples.

5. Cumulation

76. Cumulation arrangements, apart from having a significant liberalizing effect on the impact of origin rules, also foster economic and trade cooperation between preference-receiving countries, a function that is receiving increased attention in developing countries. There are three versions of cumulation, namely "partial and regional" (as applied by the EEC), "full and regional" (as applied by Japan and the United States of America) and

"full and global" (as applied by Australia, Canada and New Zealand). Definitions of these terms are contained in document TD/B/C.5/120 (para. 46). Various improvements can be considered, in particular the wider application of "full and global" cumulation in replacement of the other two less liberal forms. Alternatively, where regional cumulation is available it might be considered whether it is possible to relax the conditions that are required to be satisfied by regional groups of preference-receiving countries in order to benefit.

6. Least developed countries

77. The situation vis-à-vis origin rules and the need for special arrangements in favour of least developed countries remain as described in document TD/B/C.5/120, paragraphs 30-32.

Notes

1/ "Materials" as used in this report means raw materials, semi-manufactures, parts and components; the term "imported materials" means also materials of undetermined origin.

2/ Where the term "substantial transformation" is used this means also "sufficient working or processing", a term used by some preference-giving countries.

3/ See annex I for a summary description of these rules.

4/ Examples of specific rules for goods excepted from the basic rule are in annex II.

5/ This section relates principally to the percentage criterion used by Australia, Canada, New Zealand and the United States. Where references are made to a percentage criterion used by process criterion countries this is made clear in the text.

6/ There are "explanatory notes" for use in applying the HS. In addition, some preference-giving countries have published their own guidance notes for further clarification of certain HS chapters. As a last resort, disputes are considered by the Customs Cooperation Council, the organization under whose auspices the International Convention on the Harmonized Commodity Description and Coding System was established (14 June 1983).

7/ Sixty per cent in the case of least developed countries.

8/ EEC Official Journal No. L 85/31, December 1982.

9/ Document TD/B/C.5/WG(IV)/2, paras. 31 and 27.

10/ Data and calculations are in annex IV.

11/ Practical as distinct from theoretical comparisons may be available in due course following a questionnaire currently being addressed by the secretariat to preference-receiving countries that may have experience of exporting goods to several preference-giving countries under both percentage and process criterion rules.

12/ The need for harmonization of origin rules has also been recognized in the GATT. The Uruguay Round of Multilateral Trade Negotiations includes a draft agreement which aims to harmonize and simplify rules of origin that are used in connection with non-preferential commercial policy instruments (MTN.GNG/NG2/W/85, 2 November 1990).

13/ Both existing criteria could in theory be replaced by a single freshly devised new criterion. Since at this stage, this possibility seems unlikely to receive support, it is not pursued in the present report.

14/ Report of the Working Group on Rules of Origin, third session, 21 December 1970.

15/ "Report of the Special Committee on Preferences, on its seventeenth session" (TD/B/1263), paragraph 26.

16/ (i) Benefits would be further enhanced if concepts such as "preference-giving country content" and "cumulation" were applied uniformly on the most liberal basis by all preference-giving countries.

(ii) Further benefits might occur in ancillary matters, e.g. documentation.

ANNEX I

SUMMARY OF PERCENTAGE CRITERION RULES*

Country	Additional requirement	Numerator	Denominator	Percentage level (2 x 100) (3)	Special documentation requirements
	(1)	(2)	(3)	(4)	(5)
Australia	Final process of manufacture to be carried out in preference-receiving country	Labour and materials of preference-receiving country	Ex-works cost	Minimum 50 per cent	-
Canada	-	Value of materials or products originating outside preference-receiving country	Ex-factory price	Maximum 40 per cent (60 per cent in the case of least developed countries)	-
New Zealand	Final process of manufacture to be carried out in preference-receiving country	Expenditure on materials and components originating in the preference-receiving country	Ex-factory or ex-works cost	Minimum 50 per cent	-
United States	-	Cost of materials produced in preference-receiving country plus direct cost of processing there	Ex-factory price or value as appraised by United States customs authorities	Minimum 35 per cent	Exact percentage to be shown on origin certificate
EEC, other Western European preference-giving countries and Japan**	As prescribed for products excepted from basic rule of Change of Tariff heading	Customs value of imported materials, parts or components or, for materials, etc., of undetermined origin, earliest ascertainable price paid in country where manufacture takes place	Ex-works or ex-factory price (Japan f.o.b. price)	Various (e.g. 40 per cent, 50 per cent, 5 per cent, 47.5 per cent)	-

* Compiled from UNCTAD document TD/TAP/133/Rev.5; the data do not take account of the various arrangements for cumulative origin (all preference-giving countries) or for application of the concept of "preference-giving country content" (Australia, Canada, New Zealand and Japan).

** These countries apply the percentage criterion only in respect of certain products that are excepted from the basic process criterion rule.

ANNEX II

PROCESS CRITERION: BASIC RULE OF CHANGE OF TARIFF HEADING

PRACTICAL EXAMPLES

(i)	Finished product	Soft toys (HS heading 9503)
	Origin rule	CTH and value of imported materials must not exceed 50 per cent of the ex-works price of the finished product
	Possible materials	Stuffing material, thread, eyes, metal inserts for limbs, fabric
	HS classification	(a) Stuffing materials and thread - not classified in 9503 (b) Eyes - not classified in 9503 provided they are not mounted (c) Fabrics - not classified in 9503 provided they are not cut to shape (d) Metal inserts for limbs - classified in 9503 "solely or principally" for soft toys
	Comments	The use of this example demonstrates the necessity for HS expertise. Even if all the materials used, except for mounted eyes, originated in a preference-receiving country the finished product would fail to qualify, even if the 50 per cent rule was satisfied
(ii)	Finished product	Leather handbags (HS heading 4202)
	Origin rule	CTH
	Possible materials	Finished leather in the piece, metal or leather handles, metal handbag frames (incorporating clasp and lock), metal handbag corner pieces, handbag locks, thread, glue, rivets
	HS classification	(a) Finished leather in the piece, thread, glue, rivets - not classified in 4202 (b) Metal handbag handles - classified in 8302 (c) Leather handbag handles - classified in 4205

(d) Metal handbag frames - classified in 8301 (including clasp and lock)

(e) Metal handbag corner pieces - classified in 8302

(f) Handbag locks - classified in 8301

Comments

Compliance with the basic rule is satisfied, i.e. the handbags described may be manufactured from the materials listed, all of which could be imported without altering GSP entitlement

ANNEX III

PROCESS CRITERION: GOODS EXCEPTED FROM THE BASIC RULE

EXAMPLES OF RULES APPLIED TO SUCH GOODS*

HS heading	Description of goods	Working or processing carried out on such originating materials that confer originating status
ex 4302	Tanned or dressed fur skins, assembled, other than plates, crosses or similar forms	Manufacture from non-assembled tanned or dressed fur skins
4303	Articles of apparel, clothing accessories and other articles of fur skin	Manufacture from non-assembled tanned or dressed fur skins, of heading No. 4302
Chapter 61	Articles of apparel and clothing accessories, knitted or crocheted	Manufacture from: - natural fibres - man-made staple fibres not carded or combed or otherwise prepared for spinning, or - chemical materials or textile pulp
7116	Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed)	Manufacture in which the value of all the materials used does not exceed 50 per cent of the ex-works price of the product
7117	Imitation jewellery	Manufacture in which all the materials used are classified within a heading other than that of the product or Manufacture from base metal parts, not plated or covered with precious metals, provided the value of all the materials used does not exceed 50 per cent of the ex-works price of the product

HS heading	Description of goods	Working or processing carried out on such originating materials that confer originating status
8208	Knives and cutting blades, for machines or for mechanical appliances	Manufacture in which: - all the materials used are classified within a heading other than that of the product, and - the value of all the materials used does not exceed 40 per cent of the ex-works price of the product
8415	Air-conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated	Manufacture in which the value of all the materials used does not exceed 40 per cent of the ex-works price of the product
8418	Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air-conditioning machines of heading No. 8415	Manufacture: - in which the value of all the materials used does not exceed 40 per cent of the ex-works price of the product, and - where, within the above limit, the materials classified within the same heading as the product are only used up to a value of 5 per cent of the ex-works price of the product, and - where the value of all the non-originating materials used does not exceed the value of the originating materials used

* Examples drawn from EEC Official Journal No. L 77/21.

ANNEX IV (Part I)

CONVERSION OF PROCESS CRITERION RULES INTO PERCENTAGE CRITERION EQUIVALENTS*

Goods**	Process criterion rules	Limit of imported materials expressed in percentage terms
1. Cotton yarn	Manufacture from fibre	57.0
2. Cotton fabric, woven	Manufacture from fibre	23.8
3. Clothing of woven cotton fabric	Manufacture from fibre	13.6
4. Calculations are shown in Annex IV, Part II. Values are derived from data provided by a developed country source.		

* Data derived from document TD/B/C.5/WG(IV)/2, paras. 31-37.

** These goods are excepted from the basic rule (CTH) of the process criterion. The rules indicated are as specified in a list of exceptions (in this case as specified by the EEC, Official Journal No. L 77, 22 March 1988).

ANNEX IV (Part II)

Finished product	Origin rule requirement	Imported materials	Processes and value added	Ex-factory value of finished product	Percentage of import content
Cotton yarn	Manufacture from fibre	Cotton fibre value 100$ (a)	Spinning Value added 75$ (b)	175$ (c) (a) + (b) = (c)	(a+c) x 100 = 57%
Cotton fabric, woven	Manufacture from fibre	Cotton fibre value 100$ (a)	Spinning Value added 75$ (b) Weaving Value added 145$ (c)	320$ (d) (a) + (b) + (c) = (d)	(a+d) x 100 = 23.8%
Clothing of woven cotton fabric	Manufacture from yarn	Cotton yarn value 100$ (a)	Weaving and making up Value added 145$ (b) Value of fabric is 245$ (c)	735$* (d)	(a+d) x 100 = 13.6%

* In the clothing industry the rule of thumb is that the cost of the fabric is about 1/3 of the value of the finished garment. Since in this case the value of the fabric is 245$ the value of the finished garment is about 735$. Thus, percentage import content is (a)+(d)% = (100+735) x 100 = 13.6%.

ANNEX V

COMPARISON OF SOME EXCEPTED PRODUCTS (PROCESS CRITERION RULE) WITH THE PERCENTAGE CRITERION (CANADIAN VERSION)

List of examples

Notes

1. The data in this annex have been compiled on the basis of EEC Regulation L 77 of 22 March 1988. Lists of excepted products applied by other process criterion countries differ to some degree.

2. Examples consist of rules that impose either:

   (i) a single percentage condition of 40 per cent, or
   (ii) a single percentage condition of 50 per cent and CTH, or
   (iii) a single percentage condition of 40 per cent and CTH, or
   (iv) a single percentage condition of 50 per cent.

3. Without taking account of differences that may be found to exist in regard to formulation and bases of calculation, lists (ii), (iii) and (iv) are taken to be more restrictive than the percentage criterion rule of 40 per cent import content limitation; category (i) is taken to be the same as the percentage criterion rule of 40 per cent import limitation and the Canadian rule.

4. The lists exclude products that are subject to rules which either (i) are not defined in percentage terms, or (ii) are defined in percentage terms but incapable of comparison with the percentage criterion.

A. Products subject to 40 per cent import content limitation rule

HS heading	Description of goods	HS heading	Description of goods
63.07	Other made up articles	85.47	Insulating fittings
66.01	Umbrellas	85.48	Electrical parts
82.08	Knives	86.01-86.07	Railway locos, rolling stock
84.06	Steam turbines	86.09	Containers
84.07	Certain engines	Ch. 87	Vehicles other than railway, etc.
84.08	Diesel engines	88.03	Certain parts
84.09	Parts for 8407 or 8408	90.01	Optical fibres
84.12	Other engines	90.02	Lenses, prisms, etc.

ANNEX V (continued)

HS heading	Description of goods	HS heading	Description of goods
84.15	Air conditioning machines	90.04	Spectacles, goggles, etc.
84.29	Road rollers	90.14	Other navigational appliances
ex 84.31	Parts for road rollers	90.15	Surveying, etc. instruments
84.44 to 84.47	Machines for use in textile industry	90.16	Balances
e. 84.48	Auxiliary machines	90.17	Drawing, etc. instruments
84.56 to 84.66	Machine tools and parts	90.24	Machines for testing hardness, etc.
84.69 to 84.72	Office machines	90.25	Hydrometers, etc.
84.80	Moulding boxes	90.26	Flow meters, etc.
84.84	Gaskets	90.27	Instruments for physical analysis
84.85	Certain machinery parts	90.29	Rev meters, etc.
85.22	Parts of record players, tape recorders and videos	90.30	Oscilloscopes
85.22	Unrecorded media	90.31	Other measuring instruments
85.44	Insulated wire, etc.	90.32	Automatic regulating instruments
85.45	Electrodes	90.33	Parts for machines, etc.
85.46	Electrical insulators	91.13	Watch straps, etc. of base material

ANNEX V (continued)

(ii) Products subject to 50 per cent limitation and change of tariff heading (CTH)

HS heading	Description of goods	HS heading	Description of goods
31.05	Fertilizers, etc.	Ex Ch 78	Iron and articles thereof
48.17	Envelopes, etc.	Ex Ch 79	Zinc and articles thereof
48.19	Cartons, etc.	Ex Ch 80	Tin and articles thereof
49.19	Calendars	Ex Ch 81	Tin and articles thereof
Ex Ch 74	Copper and articles thereof	95.03	Toys
Ex Ch 75	Nickel and articles thereof	96.06	Buttons
Ex Ch 76	Aluminium and articles thereof	96.12	Typewriter ribbons

(iii) Products subject to 40 per cent limitation and change of tariff heading

HS heading	Description of goods	HS heading	Description of goods
82.07	Tools	Ch 92	Musical instruments
82.08	Knives	Ch 93	Arms and munitions
84	Nuclear reactors		

(iv) Products subject to a 50 per cent limitation rule

HS heading	Description of goods	HS heading	Description of goods
Ex 25.20	Dental plaster	39.22-39.26	Articles of plastic
Ex 28.33	Aluminium sulphate	40.05	Rubber compound
Ex 35.07	Prepared enzymes	Ex 48.20	Letter pads
Ex 38.01	Colloidal graphite	94.06	Prefabricated buildings
Ch 94	Lamps, etc.	Ex 96.03	Brooms and brushes